



UNITED STATES SENATE

February 1, 2021

The Honorable Richard Durbin
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Durbin:

Thank you for your request that I notice a February 8 hearing for President Biden's attorney-general nominee, Judge Merrick Garland. I agree completely that Judge Garland deserves a hearing—even a prompt one. However, as will be more fully stated, a one-day hearing as you are proposing the day before the impeachment trial of a former president is insufficient. The last five nominees to be attorney general all received two-day hearings. Although I am very inclined to support Judge Garland, I have many questions for him, including how he intends to handle ongoing investigations at the Department of Justice as well as the threats of extremism on the far left and the far right.

Your request is highly unusual. The Senate is about to conduct its first ever impeachment trial of a former president, and only its fourth trial of a president, incumbent or not. Under the procedure the Senate has adopted, Donald Trump's trial is set to start on February 9. But you want us to rush through Judge Garland's hearing on February 8. An impeachment is no small thing. It requires the Senate's complete focus. This is why I didn't consider any judicial nominees during last year's impeachment trial. Democrats do not get to score political points in an unprecedented act of political theater on one hand while also trying to claim the mantle of good government on the other.

Even without a looming impeachment trial this still would not be good government. As a matter of standard Committee practice this timing is rushed. You note that a February 8 hearing will give 13 days from the receipt of Judge Garland's questionnaire until the hearing. As you are well aware, the standard practice is 28 days. While the Committee held a hearing on Justice Barrett's nomination only 13 days after receiving her paperwork, the Committee had just processed her nomination to the Circuit Court three years prior. The Committee last considered Judge Garland 24 years ago. The fact is that both Senator Sessions and General Barr submitted their questionnaires a full 28 days prior to their planned hearings. Like Judge Garland, both Senator Sessions and General Barr had extensive public records but that did not impede them from giving the Committee a full 28 days to consider their materials. And, although Judge Garland was

announced almost a month ago, our Committee is *still* missing important and standard paperwork for him.

Finally, the last five attorneys general—Bill Barr, Jeff Sessions, Loretta Lynch, Eric Holder, and Michael Mukasey—all had two day hearings. It isn't clear to me why Judge Garland's extensive record deserves any less. Justice Barrett wasn't given a free pass on a routine four-day hearing during her Supreme Court confirmation, and Judge Garland shouldn't get one either. The reason we can't give Judge Garland two days next week is, of course, that Senate Democrats voted to proceed with former President Trump's impeachment trial on February 9.

I look forward to questioning Judge Garland and potentially supporting his nomination, but not on February 8. Governing requires trade-offs. When the Senate's focus is required to consider whether to bar a former president from being reelected, other business must stop. Proceeding with the confirmation of an attorney general and the impeachment of a former president at the same time would give neither the attention required.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lindsey O. Graham", with a long horizontal flourish extending to the right.

Lindsey O. Graham
Chairman
Senate Judiciary Committee